

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, COAL RIVER MOUNTAIN  
WATCH, and WEST VIRGINIA  
HIGHLANDS CONSERVANCY,**

**Plaintiffs,**

**v.**

**Civil Action No. 3:05-cv-0784**

**UNITED STATES ARMY CORPS OF  
ENGINEERS; LIEUTENANT GENERAL  
CARL A. STROCK, Commander and Chief  
of Engineers, U.S. Army Corps of Engineers;  
COLONEL WILLIAM E. BULEN, District  
Engineer, U.S. Army Corps of Engineers,  
Huntington District,**

**Defendants,**

**WEST VIRGINIA COAL ASSOCIATION,**

**Intervenor-Defendant,**

**ARACOMA COAL COMPANY, ELK RUN  
COAL COMPANY, ALEX ENERGY, INC.,  
INDEPENDENCE COAL COMPANY,  
MINGO LOGAN COAL COMPANY, INC.,  
COAL-MAC, INC., and FRASURE CREEK MINING, LLC,**

**Permittee Intervenor-Defendants.**

**MINGO LOGAN COAL COMPANY'S OPPOSITION TO  
THE UNITED STATES' REQUEST FOR EXTENSION OF STAY**

Mingo Logan Coal Company ("Mingo Logan") opposes the United States' motion to further extend the stay in this case for the reasons it has stated in opposition to similar past requests. *See, e.g.*, Doc. Nos. 485 & 483 (Mingo Logan's oppositions to the most recent prior extensions/stay requests). It has been over fifteen months since Mingo Logan filed a simple and straightforward motion for summary judgment based largely on positions advocated by the

United States and affirmed by the Fourth Circuit Court of Appeals in *Ohio Valley Environmental Coalition v. Aracoma Coal Company*, 556 F.3d 177 (4th Cir. 2009). Doc. No. 444 (filed July 16, 2009). To accommodate the agenda of non-party USEPA, the United States now steadfastly seeks to avoid application of the same principles to a permit which the Corps of Engineers issued over three and one-half years ago.

All of these delays have increased Mingo Logan's mining costs for the currently active operation, leaving it with no chance of recouping those costs in the future. *See* Doc. 485-1 (Aff't. of Rob't. Shanks). By further delaying a resolution of this proceeding to accommodate USEPA's § 404(c) action, Mingo Logan will have been deprived of its rights in this case to "the just, speedy, and inexpensive determination of every action and proceeding" guaranteed by Rule 1 of the Rules of Civil Procedure. Fed. R. Civ. P. 1. There is simply no justifiable reason to deny Mingo Logan its day in court on the issues raised in this case.

Respectfully submitted,

MINGO LOGAN COAL COMPANY, INC.  
By Counsel

/s/ Robert G. McLusky  
ROBERT G. McLUSKY (WVBN 2489)  
JAMES R. SNYDER (WVBN 3504)  
BLAIR M. GARDNER (WVBN 8807)  
JACKSON KELLY, PLLC  
1600 Laidley Tower  
Post Office Box 553  
Charleston, West Virginia 25322  
*Counsel for Mingo Logan Coal Company, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, COAL RIVER MOUNTAIN  
WATCH, and WEST VIRGINIA  
HIGHLANDS CONSERVANCY,**

**Plaintiffs,**

**v.**

**Civil Action No. 3:05-cv-0784**

**UNITED STATES ARMY CORPS OF  
ENGINEERS; LIEUTENANT GENERAL  
CARL A. STROCK, Commander and Chief  
of Engineers, U.S. Army Corps of Engineers;  
COLONEL WILLIAM E. BULEN, District  
Engineer, U.S. Army Corps of Engineers,  
Huntington District,**

**Defendants,**

**WEST VIRGINIA COAL ASSOCIATION,**

**Intervenor-Defendant,**

**ARACOMA COAL COMPANY, ELK RUN  
COAL COMPANY, ALEX ENERGY, INC.,  
INDEPENDENCE COAL COMPANY,  
MINGO LOGAN COAL COMPANY, INC.,  
COAL-MAC, INC., and FRASURE CREEK MINING, LLC,**

**Permittee Intervenor-Defendants.**

**CERTIFICATE OF SERVICE**

I, Robert G. McLusky, do hereby certify that on October 22, 2010, I electronically filed the foregoing MINGO LOGAN COAL COMPANY'S OPPOSITION TO THE UNITED STATES' REQUEST FOR EXTENSION OF STAY with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Terry R. Sammons  
Sammons Law Offices  
P.O. Box 1747  
Gilbert , WV 25621

Nicholas S. Preservati  
Preservati Law Offices  
P.O. Box 1431  
Charleston , WV 25325

Allyn G. Turner  
James S. Crockett, Jr.  
Andrew B. McCallister  
Kelly Beth Griffith  
Spilman Thomas & Battle, PLLC  
P.O. Box 273  
Charleston, West Virginia 25321-0273

Stephen E. Roady  
Jennifer C. Chavez  
Elena Saxonhouse  
Earthjustice  
1625 Massachusetts Ave., NW, Suite 702  
Washington, DC 20036

Joseph M. Lovett  
Appalachian Center for the Economy  
and the Environment  
P.O. Box 507  
Lewisburg, WV 24901

Stephen M. Horn  
U.S. Attorney's Office  
P.O. Box 1713  
Charleston, WV 25326-1713

Diana Leigh Johnson  
George A. Patterson, III  
Joseph M. Dawley  
Leonard B. Knee  
Bowles Rice McDavid Graff & Love  
P.O. Box 1386  
Charleston, WV 25325-1386

Cynthia J. Morris  
Steven E. Rusak  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20026-3986

Ruth Ann Storey  
U.S. Department of Justice  
Environment & Natural Resources Division  
General Litigation Section  
P.O. Box 663  
Washington, DC 20044-0663

Ann D. Navaro  
U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
P.O. Box 1159  
Cincinnati, OH 45201

James M. Hecker  
Public Justice  
1825 K Street, NW, Suite 200  
Washington, DC 20006

Edward P. Tiffey  
P.O. Box 3785  
Charleston, WV 25337-3785

/s/ Robert G. McLusky  
ROBERT G. McLUSKY